IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 162 OF 2018

Mr. Agnelo Gregorio Jose Simoes
S/o. Late Piedade Bapitista Simoes
Major of age, Indian National
R/o. H. No.16(715) Lima Vaddo ,
Porvorim, Bardez- Goa.

...Petitioner

Versus

1 Mr. Antonio Rosario L.F. Simoes
S/o. Late Piedade Bapitista Simoes
Major of age, Indian National
R/o. H.No.10, Sanmarg Nagar
Opp. KEF Airport Road Hubli,
Presently residing at Gurim,
Mapusa, Bardez- Goa.

2 Mrs. Suzana Francisca Mascarenhas
Major of age, Indian National,
R/o. H.No.16(675), Lima Waddo,
Porvorim, Goa.

3 The Senior Manager
Oriental Bank of Commerce
Mapusa Branch,
Mapusa – Goa

...Respondents

Shri G. Teles, Advocate for the petitioner.

Shri Kewal T. Sawant, Advocate for the respondents.

CORAM: NUTAN D. SARDESSAI, J.

RESERVED ON : 3rd October,2018
PRONOUNCED ON : 15th October,2018

JUDGMENT :-

1. Heard forthwith with the consent of the learned Advocate for the parties.

2. Rule.

3. Shri Kewal Sawant, learned Advocate waives service of notice on behalf of the respondent.

4. The petition has taken exception to the order dated 16/09/2017 passed by the Senior Civil Jude, Mapusa pursuant to which she dismissed the application of the petitioner for rejection of the plaint under Order VII Rule 11(b) CPC invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

5. Heard Shri G. Teles, learned Advocate for the petitioner who submitted that he had moved an application before the learned Trial Court seeking the rejection of the plaint on the premise that the suit was undervalued and in the alternative seeking a direction to the respondent – plaintiff to correct the valuation within the time fixed by the Trial Court on the premise that the plaint was restricted to an amount of ₹23,33,291/- being the maturity proceeds of the fixed deposit held jointly by the petitioner and the respondents and the suit being for injunction at the instance of the respondents simplicitor. He referred to the reply filed by the respondents in which they had pressed for the dismissal of the application on the grounds that it was not maintainable and as the suit was filed simplicitor for injunction and the valuation being made as per the relief claimed in the suit without any declaratory relief. The Trial Judge however found favour with the contentions on behalf the respondents and dismissed the application.

6. Shri G. Teles, learned Advocate referred to the Bombay amendment to Order VII Rule 1(i) CPC, pursuant to which the plaint was required to contain a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of the Courts even so far as the case attempts showing the provisions of law under which the valuation of the Court fees and jurisdiction is seperately made. He next referred to the plaint wherein there was a clear reference to the Fixed Deposit in the total of ₹23,33,291/- coupled with the relief claimed in the suit seeking a direction to the petitioner and another not to encash the fixed deposits and a direction to the bank not to pay the amount in the fixed deposits without the written consent of the respondents. A reference was also made by him to Section 7 of the Court Fees Act dealing with the computation of fees payable in certain suits and submitted that in view of the subject matter of the suit being an amount of more than ₹23,00,000/-, the valuation had to be done appropriately and for want thereof the plaint was liable for rejection. He placed reliance in **Bharat Shanchar Nigam Ltd. v/s. All India Bharat Sanchar Nigam** [2006(87)DRJ 401], to substantiate his case and pressed for the quashing of the order under challenge.

7. Shri K. Sawant, learned Advocate for the respondent no.1 submitted that the suit as filed by him was simplicitor for injunction claiming the relief in the nature of a direction to the petitioner and another not to encash the fixed deposits and a direction to the bank not to pay the amount to them without his written consent. No relief of declaration was sought by him and therefore it was his prerogative to fix the valuation of the suit. He too referred to Section 7 of the Court Fees Act, distinguished the judgment in **Bharat Sanchar Nigam Ltd.** (supra), and otherwise placed reliance in **Nemchand Jain v/s. Sachin Parashar** [2015 CK (MP) 748]. It was also his contention that in terms of the schedule to the Bombay Court Fees Act the respondent no.1 plaintiff was at liberty to fix the valuation of the suit and on that premise too the petition was not tenable and liable for dismissal.

8. i have considered their submissions, the relevant provisions of CPC and of the Court Fees Act apart from the judgment in **Bharat Sanchar Nigam Ltd**. and **Nemchand Jain** (supra).

9. The respondent no.1 – plaintiff had filed a suit no doubt simplicitor for injunction but spelling out the basis that he alongwith the defendant nos.1 and 2 i.e. the petitioners herein and another were holding jointly amounts in fixed deposits with the bank which were likely to mature on a defined date. The total amount on the maturity value of these deposits was ₹23,33,291/-. The relations between them were not good and a civil suit was pending between them. The petitioner had indicated to him that he would not pay any amount to the respondent no.1 and would encash the fixed deposits being in possession of the originals and apprehending such action at the instance of the petitioner, the suit was filed seeking the said relief of injunction. The respondent no.1 however had valued the suit for the purpose of injunction in the amount ₹1,000/- and also for the purpose of jurisdiction and on the premise that there was no declaration sought on the basis of its valuation. The respondent no.1 despite claiming the relief in respect of the fixed deposits in an amount of more than ₹23,00,000/- had fixed the valuation of the suit at only ₹1,000/- and which was the amount for the purpose of jurisdiction when he was otherwise required to state the valuation of the suit and pay the same by computing the same in terms of Section 7 of the Court Fees Act.

10. Section 7 of the Court Fees Act dealing with the computation of the fees payable for certain cases provides in terms of sub-clause (iv) that in suits relating to injunction, to obtain an injunction amongst others according to the amount at which the reliefs sought is valued in the plaint or the memorandum of appeal. The schedule II to the said Act in terms of item no.17 provides at clause 6 that every other suit where it is not possible to estimate at a money-value the subject matter in dispute, and which is not otherwise provided for by the Act, to pay a fixed fee of ₹10/-. The case of the respondent no.1 does not at all fall within this provision inasmuch as the respondent no.1 had clearly spelt out the amount claimed by him qua the amount in the fixed deposits of the total maturity value of ₹23,33,291/- and therefore it cannot be heard on behalf of the respondent no.1 that it was his choice and prerogative to fix the valuation of the suit and pay the Court fee accordingly. Moreover, in terms of Bombay Amendment to Order VII Rule 1(i), the respondent no.1 was required to make a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of Court fees so far as the case admit. The respondent no.1 by conveying that his suit was simplicitor for injunction had couched his relief in the value of ₹1,000/- and the same being for the purpose of jurisdiction on the specious premise that no declaration was sought on the basis of its valuation.

11. In **Bharat Sanchar Nigam Ltd.**(supra), the plaintiff filed a suit for permanent and mandatory injunction against the defendant its office bearers, members etc. to restrain them from resorting to strike, rallies, dharnas, demonstrations, etc. in and around their office premises including the residential premises of the officers and a mandatory injunction commanding them not to interfere in the ingress and exit of the officers, staff or public in and from the office of the plaintiff, including the residential premises of their officers. The defendants contested the suit in which one of the basic preliminary objection taken by the defendants was that the plaintiffs were liable to pay the court fee on ₹25,00,000/- as it could not value the suit differently for the purposes of court fee and jurisdiction particularly in the facts and circumstances of the case. A plea was also raised that the plaint was liable to be rejected under Order VII Rule 11 CPC as the plaintiff had not paid the requisite court fee on the plaint despite a specific objection being taken by the defendants in that regard. The plaint was liable to be rejected at this stage itself and the suit was liable for dismissal.

12. In **Bharat Sanchar Nigam Ltd.**(supra), the learned Single Judge as his Hon'ble Lordship then was, found from a reading of the plaint that the plaintiff had valued the suit for the purposes of pecuniary jurisdiction of the Court at ₹25,00,000/- but for the purposes of payment of Court fee, the suit had been valued at ₹200/- on which the Court fee of ₹20/- paid for each relief and found that the affixation of such Court fee ex-facie appeared to be arbitrary as there was no basis for fixation of the suit for pecuniary jurisdiction at ₹25,00,000/- and if that value was true, then the Court fee would have to be paid on the same amount as the plaintiff, normally and except for the exceptions provided under law, cannot affix the fixed court fee on the plaint.

13. In **Bharat Sanchar Nigam Ltd.**(supra), the learned Single Judge observed that if on the materials available before it the Court is satisfied that the value of relief as estimated by the plaintiff in a suit for accounts is undervalued, the plaint is liable to be rejected under Order VII Rule 11(b) CPC. It is therefore necessary that the plaintiff should take care that the valuation is adequate and reasonable taking into account the circumstances of the case. In coming to the conclusion that the suit is undervalued, the Court will have to take into account that in a suit for accounts, the plaintiff is not obliged to state the exact amount which would result after the taking of the accounts. If he cannot estimate the exact amount, he can put a tentative valuation upon the suit for accounts which is adequate and reasonable. The plaintiff cannot arbitrarily and deliberately undervalue the relief.

14. **Bharat Sanchar Nigam Ltd.**(supra), considered a Full Bench decision of the Delhi High Court in **Mahant Purshottam Dass and Anr v. Hari Narian and Ors.** while accepting the right of the plaintiff to value its suits contemplated under Section 7(iv) of the Act but obviously subject to the limitation stated therein, it was further held that the question has to be determined on the basis of the allegations made in the plaint and the prayer made therein. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for. The learned Single Judge formulated a question as to how the plaintiff could fix the value of suit for the purposes of payment of Court fee at ₹200/- when it had stated that the pecuniary value of the suit for the purpose of jurisdiction was ₹25,00,000/-. In the facts of the case, the learned Single Judge found that the definite expression used in paragraph no.23 of the plaint leaves no doubt in the mind of the Court that the differentiation stated by the plaintiff in the valuation of the suit for the purposes of jurisdiction and Court fee is arbitrary, was an attempt to avoid the payment of ad valorem courts fee and had no rational basis in law. It was certainly in the discretion of the plaintiff to value the suit. Once it had valued the suit, it was obliged to pay the ad valorem Court fees upon such valuation unless the case of the plaintiff falls in one of the specified exceptions. Certainly the case of the plaintiff did not fall in any of the carved exceptions in the above provisions of law. The plaintiff had taken the luxury of fixing the value of the suit for the purposes of pecuniary jurisdiction was ₹25,00,000/- and therefore it was obliged to pay the ad valorem Court fee on that amount. Any other interpretation would, in fact, be contrary to the specific provisions of the above Statutes and would also be encouraging the intent of persons, like the plaintiff, of forum shopping. Nobody can be permitted to exercise a discretion in such an arbitrary manner which is even opposed to public policy. In the facts therefore the learned Judge also held that the plaintiff would be entitled to an opportunity to pay the ad-valorem court fee and make up the deficiency thereto before the plaint is rejected under Order VII Rule 11 CPC.

15. In **Nemchand Jain** (supra), in a suit for declaration and permanent injunction filed by the respondent no.1, the petitioners / defendants had raised an objection by filing an application under Order VII Rule 11 CPC that proper Court fees had not been paid. The Trial Court taking into consideration the relief as sought for by the plaintiffs observed that since the suit is for declaration and permanent injunction, the Court fees as is required under Section 7(iv)(d) of the Court Fees Act,1870 had been paid and accordingly rejected the application. The learned Single Judge tested the conclusion arrived at by the Trial Court on the anvil of the reliefs sought by the plaintiff i.e. declaration and permanent injunction and found that he being in possession cannot be faulted with and in that view of the matter dismissed the petition. This judgment does not give any indication of what was the value sought in the suit on the premise on which the application came to be rejected by the Trial Court. This judgment is clearly distinguishable and otherwise not binding on this Court.

16. Coming to the order under under challenge, the learned Senior Civil Judge had considered the case of the petitioner and the respondents, observed that the suit was for injunction to direct the defendant nos.1 and 2 not to encash the fixed deposits receipts in the maturity amount of ₹23,33,291/- and the defendant no.3 not to pay the amounts to the defendant nos.1 and 2 and merely concluded with much haste that she agreed with the contention of the plaintiff who had valued the suit at ₹1,000/- without seeking any declaratory relief and that the suit was properly valued and there was no basis in the contention of the defendant nos.1 and 2 that the suit was undervalued and dismissed the application of the applicant for rejection of the plaint. The learned Civil Judge failed to exercise the jurisdiction vested in it while appreciating the case of the parties and thus passed the order which is illegal and perverse and a result of failure to exercise the jurisdiction vested in it. In the result, therefore the impugned order cannot be allowed to stand. Hence, i pass the following

O R D E R

1. Rule is made absolute.

2. The impugned order is quashed and set aside. An opportunity is afforded to the respondent no.1 to make good the valuation before the plaint is rejected under Order VII Rule 11b CPC for which the respondent no.1/

plaintiff is granted two weeks time.

3. The petition accordingly stands disposed off.

NUTAN D. SARDESSAI J.

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